



**Date:** September 25, 2012

**To:** Thomas J. Bonfield, City Manager  
**Through:** Keith Chadwell, Deputy City Manager  
**From:** Steven L. Medlin, City-County Planning Director  
**Subject:** Recommended Coordination Strategy for the Annexation, Utility Extension Agreement and Initial Zoning Process and Associated Policy Changes

**Summary:** The current practice of annexation, utility extension agreements (EAs) and initial zoning actions used by the City are inadequately coordinated and provide insufficient information and analysis to elected officials regarding the long-term costs and benefits of land use and utility provision decisions.

Additionally, the Urban Growth Area (UGA), which was developed as a tool for utility capacity planning, no longer serves that purpose. A process that provides more complete and coordinated information to elected officials regarding the long-term costs and benefits of utility provision and land use change, elimination of the UGA, and a limitation on the circumstances under which City utility service may be provided outside of the City limits is being proposed.

Finally, recent changes to the North Carolina General Statutes related to involuntary annexation will significantly limit the City's ability to expand – requiring more thoughtful consideration of “satellite” annexations.

**Recommendation:** That the City Council adopt the proposed changes to Durham City Code, Chapter 70, Article III, as attached, and direct the administration to take the following actions:

1. Implement a coordinated annexation, utility extension agreement, comprehensive plan and initial zoning process (see Attachment 1);
2. Ensure that this process provides detailed information on the projected short and long term fiscal (operating and capital) and service delivery impacts of development, including the impact of the sizing and location of utilities on land use demand and consistency with the adopted Comprehensive Plan; and
3. Provide fiscal and service delivery impact analyses as described above, for all discretionary land use and utility provision decisions, including those that do not involve annexation; and
4. Direct the Planning Department to make modifications to the Durham Comprehensive Plan and/or the Durham Unified Development Ordinance that

will create consistency with the intent of the resolution associated with this item

5. Through the aforementioned changes to Chapter 70 of the Durham City Code, ensure that annexation will be required as a precondition of water and sewer utility service, with limited exceptions as identified in Section 70-129 of City Code

**Background:** Four separate, but interrelated, issues have converged, leading to this item. A brief background on each is provided below:

#### *Coordination of Annexation, EA and Initial Zoning Processes*

In the past, annexation, EA and initial zoning items were often presented for City Council consideration at different meetings. Often EAs were presented to the Council in advance of annexation and initial zoning. When individually presented to the Council, these items were often not sufficiently referenced to each other (e.g., EAs and annexation reports did not reference land use issues and vice versa). This lack of coordination had the potential to result in situations that did not provide City Council members with full and adequate context for decision making on these items (see “Issues” discussion below for more detail).

#### *Sufficiency and Completeness of Information on Land Use and Utility Provision Decisions*

In the past, there was limited discussion of the fiscal impact of proposed annexations (i.e.: projected impact on local government revenues) and the service delivery impacts of these actions. There has also been insufficient analysis of long term maintenance and operating costs of utility extensions associated with EAs, or assessment of the projected impacts of utility provision on land use demand and the consistency of these impacts with the Durham Comprehensive Plan’s Future Land Use Map (FLUM). This information is critical for assessing the medium-and-long term impacts of utility provision and land use decisions.

Additionally, practice that evolved over 20 years led to the City often accepting zoning map change requests approved by the County without additional commitments or other modifications to address the unique concerns of the City (e.g.: in terms of land use, facility and service provision).

#### *Urban Growth Area (UGA)*

The UGA was established in the 1960s as a water and sewer service capacity planning tool. By the 1980s, it was used as a tool to help identify the future extent of urban growth. Since the 1980s, however, the City’s ability to track and manage its water and sewer capacity and the sophistication of land use planning tools (such as the Tier designations in the Comprehensive Plan) has increased, thus eliminating much of the purpose and need for the UGA.

#### *Utility Provision Outside of the City Limits*

Current utility service policy does not closely tie the provision of City water and sewer utility service to annexation. In conjunction with legislative restrictions on involuntary annexation, these policies have led, over time to “donut hole” and satellite areas, e.g.: areas of County

jurisdiction completely or partially surrounded by City jurisdiction, that reduce the efficiency of City service provision.

## **Issues:**

### *Coordination of Annexation, EA and Initial Zoning Processes*

Annexation, EA and zoning actions are all important parts of the process of land development, and each provides a different set of rights and responsibilities (or “entitlement”).

These processes, however (and as noted above), have been brought before Council at different meetings and without explicit reference to each other.

The approval of an EA in advance of annexation and/or zoning actions and with water and/or sewer capacities that may induce future land use conversion (e.g.: lower density residential to commercial or industrial) may undermine the intent of the Comprehensive Plan. Extension of “upsized” utility lines in an area designated for low density development will significantly increase demand for higher density development.

If the proposed coordination process is adopted, a single, coordinated recommendation will come forward from staff to Council regarding zoning, EA and annexation actions.

### *Sufficiency and Completeness of Information on Land Use and Utility Provision Decisions*

Without extensive analysis of the fiscal and service delivery impacts on the City, Council members have incomplete information to make an informed land use, annexation or utility provision decision. Additionally, long term fiscal impacts of utility provision decisions and of annexations have not been explicitly vetted through the EA process. Answering the following questions, in conjunction with coordinating the annexation, EA and initial zoning processes, will help provide City Council with improved information for decision making:

- Can existing and/or planned public services and facilities accommodate the proposed development without addition of new facilities or staff? If not, what are the facility and/or staff impacts?
- What are the short and long (i.e.: “life-cycle”) projected fiscal impacts of the proposed development, including utility system costs (relative to projected revenues)?
- Are the sizing and location of the proposed utility improvements consistent with the density and intensity of land uses identified on the Future Land Use Map of the Durham Comprehensive Plan?

Another concern in this regard is surety practices for infrastructure. The City has recently improved its surety practices (see Attachment 4) to minimize the risk to the City of failed developments. Currently water and sewer infrastructure must be completed and accepted by the City prior to any certificate of occupancy. This type of infrastructure cannot be secured as an alternative to completion. Currently the only type of infrastructure that can be secured prior to completion with the allowance of certificate of occupancy is the final lift of asphalt and stormwater facilities. These facilities (final lift of asphalt and stormwater facilities) are subject to the surety requirements outlined in Attachment 4.

### *Urban Growth Area (UGA)*

As noted above, the UGA was established primarily as a utility planning tool, to establish the outer limits of the area where urban services could be provided and to assist Public Works and Water Management in identifying potential long terms capacity needs. Since the establishment of the UGA, better tools for managing future capacity needs have been developed. Today, future land use designations, development “tiers” that discourage utility provision in rural and environmentally sensitive areas, utility demand modeling software, and data analysis techniques guide the location of urban and suburban land uses. As such, the UGA appears to no longer serve a valuable public purpose.

#### *Utility Provision Outside of the City Limits*

The North Carolina General Assembly has passed a series of laws that will make involuntarily annexation very difficult to accomplish in the future. As such, areas that receive City water and sewer utility service outside of the City limits are likely to remain unincorporated for the indefinite future. This can lead to significant service delivery and cost equity concerns, such as areas that rely on City fire protection and parks without being subject to City taxation. Based on these concerns, requiring annexation as a condition of City water and sewer utility services (with limited exceptions that may authorized by City Council) is recommended.

#### **Alternatives:**

The Council can elect to maintain the status quo regarding EAs, annexations, and initial zonings; or adopt these recommendations; or direct the Manager to develop a different policy approach.